

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

GARLOCK SEALING TECHNOLOGIES, LLC,

Plaintiff and Appellant,

v.

NAK SEALING TECHNOLOGIES CORP.,

Defendant, Cross-Complainant
and Appellant;

SUNRISE TRADING CO.,

Defendant, Cross-Defendant
and Respondent.

C050813

(Super. Ct. No.
02AS06092)

**ORDER MODIFYING
OPINION AND DENYING
REHEARING
[No Change in
Judgment]**

APPEAL from a judgment of the Superior Court of Sacramento County, Trena Burger-Plaven, J. Reversed in part and affirmed in part.

Rutan & Tucker, LLP, Ronald P. Oines and Treg A. Julander for Plaintiff and Appellant Garlock Sealing Technologies, LLC.

Solunce PLLC and Scott Payzant; Kroloff, Belcher, Smart, Perry & Christopherhson and Velma K. Lim for Defendant Cross-Complainant and Appellant Nak Sealing Technologies Corp.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Thomas G. Redmon and Daniel L. Baxter for Defendant, Cross-Defendant and Respondent Sunrise Trading Co.

THE COURT:

It is ordered that the opinion filed herein on March 21, 2007, be modified as follows:

On page 61, at the end of the first full paragraph immediately following the last sentence of that paragraph which reads, "Instead, we shall remand the matter to the trial court" add a footnote indicator next in order.

The text of the footnote shall read, "Mao Shun claims four separate grounds for affirming the trial court's denial of implied contractual indemnity claim. We have carefully considered each and find they are almost entirely based on factual and legal premises that we have already rejected elsewhere in this opinion. We note Garlock's settlement with Rockwell operated at a minimum to reduce and discharge a portion of Mao Shun's liability exposure to Rockwell. Rockwell could not recover twice for the damages it suffered from the defective oil seals should it proceed against Mao Shun. There is no serious question of the existence of a contract between Mao Shun and Garlock for the sale and purchase of those seals based on their course of dealing, the sample documentation, and the trial court's finding that Sunrise Trading was Mao Shun's agent. We need not repeat our discussion regarding Mao Shun's claims regarding Garlock's reliance on its own expertise, its failure to do functional testing, and Garlock's express warranties and indemnification agreement in its contract with Rockwell. Moreover, to the extent there may be equitable reasons for the trial court to deny implied contractual indemnity to Garlock or to assess relative equities between Mao Shun and Garlock, these matters may be raised and argued in the trial court when it reconsiders this issue on remand. We do not express any opinion on the ultimate resolution of the issue, which we have left to the trial court."

The petition for rehearing is denied. This modification does not effect a change in the judgment.

RAYE, Acting P.J.

BUTZ, J.

CANTIL-SAKAUYE, J.